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Supreme Court, U.S.
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No. 96-253

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

CESAR D. JARABE, SR., individually and for the benefit of the Estate of TOMASA ISMA JARABE, his deceased wife,

Petitioner,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS and AMERICAN AIRLINES, INC.,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether Section 7(i) of the Illinois Workers' Compensation Act which limits the death benefits received by alien beneficiaries who live outside the United States, Mexico and Canada to 50% of what they would otherwise receive under Section 7(b) of the Act is constitutional.

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED FOR REVIEW	i
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	2
1.) The claim now before the United States Supreme Court is moot	2
2.) The Decision of the Illinois Supreme Court is correct	5
CONCLUSION	6
APPENDIX	App. 1

TABLE OF AUTHORITIES

CASES	PAGE
A.O. Smith Corporation v. Industrial Commission, 109 Ill.2d 52 (1985)	5
DeAyala v. Florida Farm Bureau Casualty Insurance Company, 543 S.2d 204 (Fla. 1989)	1, 5
Edwardsville School Service v. Labor Relations Board, 235 Ill.App.3d 954, 600 N.E.2d 910 (Ill. 4th Dist. 1994)	4
Hamer v. Board of Education, 104 Ill.App.3d 308, 488 N.E.2d 1096 (Ill. 2d Dist. 1986)	4
Jurado v. Popejoy Construction Company, 253 Kan. 116, 853 P.2d 669 (Kan. 1993)	1, 5
Kandalepas v. Economu, 269 Ill.App.3d 245, 645 N.E.2d 543 (Ill. 1st Dist. 1994)	4
U.S. Bancorp Mortgage Company v. Bonner Mall Partnership, 115 S.Ct. 386 (1994)	4

STATUTES	
820 ILCS 305/8(b)(4.2)	3

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

The Respondent, American Airlines, Inc., in response to the Petitioner's Writ of Certiorari prays the Petitioner's Writ be denied.

STATEMENT OF THE CASE

The Statement of the Case contained in the Petitioner's Writ of Certiorari is largely correct. However, the Respondent offers the following additions and/or corrections.

The Petition states that the deceased worker, Abundia Jarabe McLeod was a United States citizen. In fact, the record contains no evidence or testimony regarding the decedent's citizenship. Also, the Petition states the deceased was covered by the Illinois Workers' Compensation Act because her work had been declared extrahazardous by the Illinois state legislature. However, at trial there was no issue as to whether the deceased was covered by the Act. Essentially, the parties agreed that the deceased was covered by the Act at the time of her death. Therefore, there was never a declaration that the deceased's work was extrahazardous.

The Petition also states that Judge Berman, of the Circuit Court of Cook County, Illinois, relied upon cases from Florida, *DeAyala v. Florida Farm Bureau Casualty Insurance*, (Fla. 1989) 543 S.2d 204, and Kansas, *Jurado v. Popejoy Construction Company*, (Kan. 1993) 853 P.2d 669, in rendering his decision that Section 7(i) of the Act was unconstitutional. However, Judge Berman made only an oral ruling in this matter with directions to the

parties to draw up the order. There is no published opinion stating the reasons for his ruling. The order indicates only that Judge Berman ruled Section 7(i) unconstitutional as to both the Illinois Constitution and the United States Constitution.

In addition to the workers' compensation claim, the estate of the deceased worker filed a civil action for wrongful death in the Circuit Court of Cook County, Illinois, against numerous defendants. That claim was filed under case number 93 L 15116. The deceased worker's employer, American Airlines, was not a named defendant. However American Airlines subsequently filed a Petition to intervene to protect its workers' compensation lien. On August 16, 1996 the wrongful death claim was settled by an agreement of the parties. The Honorable Robert Boharic entered an order approving the settlement and fixing the Workers' Compensation lien. A copy of that order is attached hereto in the appendix.

REASONS FOR DENYING THE WRIT

1.) The claim now before the United States Supreme Court is moot.

The claim now before the United States Supreme Court arises out of the work related death of Abundia Jarabe McLeod. Ms. McLeod was killed while working for American Airlines at O'Hare International Airport in Chicago, Illinois. Under the Illinois Workers' Compensation Act, the death beneficiaries of Abundia Jarabe McLeod, as defined by Section 7 of the Act, have a claim against American Airlines as her employer. It is out of that claim that the Petitioner's constitutional challenge to the Illinois Workers' Compensation Act arose.

The Estate of Abundia Jarabe McLeod also filed a wrongful death claim against numerous defendants. The Respondent, American Airlines, filed a Petition to intervene in that wrongful death claim to protect its Workers' Compensation lien against any recovery.

The parties in the civil action subsequently entered into an agreement to settle the wrongful death claim. Pursuant to that settlement, an order was entered by the Honorable Robert V. Boharic of the Circuit Court of Cook County, Illinois on the estate's petition to approve the distribution of litigation proceeds and to adjudicate the Workers' Compensation lien. That order states that American Airlines has claimed a Workers' Compensation lien of $25,967.50 which is not disputed. The order also states that American Airlines was granted a credit against future Workers' Compensation payments under the Workers' Compensation award of $324,032.50.

The foregoing credit, agreed to by the parties, renders the Petitioner's constitutional challenge to the Illinois Workers' Compensation Act moot. Section 8(b)(4.2) of the Act states, "[A]ny provision herein to the contrary notwithstanding, the total compensation payable under Section 7 [820 ILCS 305/7] shall not exceed the greater of $250,000.00 or 20 years." *820 ILCS 8(b)(4.2)*. Under the Arbitrator's decision at the Illinois Industrial Commission, Cesar Jarabe, Sr., the deceased's beneficiary, is entitled to weekly benefits of $148.75. Weekly payments of 20 years at that rate would be $154,700.00. Therefore, the maximum benefit the death beneficiary could receive is $250,000.00, significantly less than the credit the Respondent has received. Without the limit of 50% imposed by the statute, the Petitioner would receive weekly bene-

fits of $297.50. The maximum recovery under that rate would be $309,400.00 which is still significantly less than the Respondent's credit.

There is no real controversy before this United States Supreme Court. The relief sought by the Petitioner would declare the limitation of weekly death benefits to non-resident aliens outside the United States, Mexico and Canada unconstitutional. However, such a ruling would have no real effect on the Petitioner as the credit American Airlines has received is greater than any amount the Petitioner would receive. Even if the Petitioner is entitled to full benefits he could only receive $309,400.00. The Respondent's credit more than offsets that amount.

It is well settled that an issue is moot when no actual rights or interests of the parties remain or where events occur which render it impossible for the reviewing court to grant effectual relief to either party. [See for example, *Kandalepas v. Economu*, 645 N.E.2d 543 (Ill. 1st Dist. 1994); *Edwardsville School Service v. Labor Relations Board*, 600 N.E.2d 910 (Ill. 4th Dist. 1994); *Hamer v. Board of Education*, 488 N.E.2d 1096 (Ill. 2d Dist. 1986)] In the United States Supreme Court, Justice Scalia, writing for a unanimous Court, upheld the denial of a motion to vacate a bankruptcy court judgment because settlement had rendered the case moot. *U.S. Bancorp Mortgage Company v. Bonner Mall Partnership*, 115 S.Ct. 386 (1994). Likewise, in the present matter, settlement has rendered this claim moot. The United States Supreme Court cannot render actual or effectual relief to the Petitioner.

2.) The Decision of the Illinois Supreme Court was correct.

Aside from the issue of mootness, the Petition for Writ of Certiorari should be denied as the decision of the Illinois Supreme Court was correct. The Illinois Supreme Court held the Petitioner Cesar Jarabe, Sr. and the Estate of Tomasa Isma Jarabe, his deceased wife, did not have standing to challenge the constitutionality of the statute. The Court stated that the Petitioner, as an alien living outside the United States, cannot invoke the equal protection or due process clause of either the Federal or State Constitution. In other words, the Petitioner simply does not have any constitutional rights as he is not a United States citizen and does not reside and is not present in the United States.

However, as the Petitioner points out, some states, specifically Kansas and Florida, have held that the non-resident aliens in these types of claims take on the rights of the deceased worker in asserting their constitutional claims. [See, *Jurado v. Popejoy Construction Company*, 253 Kan. 116 853 P.2d 669 (Kan. 1993) and *DeAyala v. Florida Farm Bureau Casualty Insurance Company*, 543 S.2d 204 (Fla. 1989)] In those states, the rights of the death beneficiaries are said to be derivative of the deceased worker. But, as the Illinois Supreme Court correctly holds, Illinois case law has already held that the rights of the death beneficiaries are not derivative of the deceased worker. *A.O. Smith Corporation v. Industrial Commission*, 109 Ill.2d 52 (1985). The Petitioner cannot assert the deceased worker's rights but must only assert his own rights, if any exist.

Here, the Illinois Supreme Court has applied Illinois case law to an Illinois statute. The Petitioner is asking this Court to intercede in the state claim and impose constitutional protection. In essence, the Petitioner is trying to extend constitutional rights to anyone outside the United States, who is not a citizen, but has a tenuous connection to the United States because a relative lives there. The Illinois Supreme Court was correct in upholding the statute as constitutional.

CONCLUSION

For the foregoing reasons, this United States Supreme Court should deny the Petition for Writ of Certiorari to review the judgment of the Illinois Supreme Court.

Respectfully submitted,

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APPENDIX

IN THE
CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—LAW DIVISION

LUISITO QUEROL, Administrator of the Estate of ABUNDIA J. McLEOD, a.k.a ABUNDIA J. JARABE, Deceased, Plaintiff,	]	
vs.	]	NO. 93 L 15116
AMERICAN EAGLE AIRLINES, INC. et. al., Defendants.	]	

ORDER
APPROVING THE COSTS, FEES AND THE NET PROCEEDS TO HEIRS, AND FIXING THE WORKERS' COMPENSATION LIEN OF TRAVELERS INSURANCE COMPANY AND AMERICAN AIRLINES

This matter coming to be heard in open court on, LUIS P. QUEROL, ADMINISTRATOR, by RITTENBERG & BUFFEN, LTD. and STEINBERG, POLLACEK & GOODMAN, Co-Counsels for the Plaintiffs **Petition** to approve distribution of the proceeds of this litigation to pay fees, and costs in this matter and adjudicate a workers' compensation lien and the allocations of net distribution to the appropriate beneficiaries pursuant to the agreement of said beneficiaries, filed with the COURT, and it appearing that proper notice has been given to the parties hereto and that TRAVELERS INSURANCE COMPANY, intervening and appearing by counsel, and the Court being fully advised in the premises **FINDS**:

1. The defendants have offered to settle this case for $350,000.00.

2. The plaintiff, Luisito Querol, administrator has accepted said sum in settlement and executed a release.

3. The beneficiaries, Petitioner and their attorneys have agreed that said sum is fair and reasonable.

4. Pursuant to the *Workers' Compensation Act of Illinois*, 820 ILCS 305/1, *et. seq*. AMERICAN AIRLINES and/or its insurance carrier, THE TRAVELERS INSURANCE COMPANY, have been paying an award under 820 ILCS 305/7 (b) and (i) in the amount of $148.75 per week to Cesar Jarabe, Sr., the decedent's father, since April 5, 1993.

5. AMERICAN AIRLINES and THE TRAVELERS INSURANCE COMPANY are represented by JOBIN & FLYNN, 190 South LaSalle Street, Suite 1600, Chicago, Illinois 60603 (312) 609-2900. As intervenors and they claim a lien in a gross sum of $25,967.50 (calculated to August 9, 1996) which lien is not disputed.

6. The beneficiaries of this cause of action have agreed to the payment of all legal fees and costs on a prorated basis from the distribution of gross proceeds.

6. Plaintiff's attorneys are entitled to a fee of 40% of the settlement in accordance with the attorney client agreement payable to RITTENBERG & BUFFEN, LTD. and STEINBERG, POLLACK & GOODMAN, Co-Counsels for the Plaintiffs, in the sum of $140,000.00. There were 15 depositions taken in this case, an inspection of the aircraft involved by Attorney Brad Steinberg and on scene photos taken. Attorney, Ivan M. Rittenberg took statements from the heirs in the Philippines which were used

to develop expert testimony on the value of the decedent's relationship to the siblings, all to the end of bringing about to aforesaid settlement.

7. Plaintiff's attorneys, STEINBERG, POLLACK & GOODMAN are entitled to reimbursement of litigation costs of $15,569.72.

IT IS HEREBY ORDERED, APPROVED AND ADJUDGED

a. Plaintiff's attorneys, RITTENBERG & BUFFEN, LTD. and STEINBERG, POLLACK & GOODMAN, Co-Counsels for the Plaintiffs are awarded the sum of $140,000.00 as and for attorneys' fees.

b. Plaintiff's attorneys, STEINBERG, POLLACK & GOODMAN are awarded litigation costs of $15,569.72.

c. The heirs/beneficiaries are entitled to the net distribution in the sum of $194,430.28.

d. Pursuant to the agreement of the beneficiaries on file with this Court it is Ordered a distribution in shares as follows: 1/3rd to the father, CESAR D. JARABE, SR. in the sum of $64,810.03;

2/3rds to be divided equally by the nine (9) sibling beneficiaries being the sum of $129,620.25 in equal shares:

1–Remedio J. Inocando, $14,402.25,
2–Raymundo I. Jarabe, $14,402.25,
3–Rumolo I. Jarabe, $14,402.25
4–Rosita J. Angub, $14,402.25,
5–Rebecca I. Jarabe, $14,402.25,
6–Rito J. Jarabe, $14,402.25,
7–Cesar I. Jarabe, Jr., $14,402.25,
8–Rolando I. Jarabe, $14,402.25 and
9–Theresa I. Jarabe, $14,402.25.

e. AMERICAN AIRLINES and TRAVELERS INSURANCE COMPANY are to be paid $18,320.46 from $64,810.03 payable to Cesar D. Jarabe, Sr. and the Balance sum of $46,489.58 is to be paid to Cesar D. Jarabe, Sr.

f. AMERICAN AIRLINES and TRAVELERS INSURANCE COMPANY are granted a credited against future workers' compensation payments under the workers' compensation award in the sum of $324,032.50.

g. This case is dismissed as settled each party to pay their own costs.

h. The payment and distribution of the proceeds and costs approved herein are made subject to Approval of the Probate Court of Cook County, Illinois.

ENTERED: _____

/s/ Robert V. Boharic
JUDGE
August 16, 1996
Circuit Court-181

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